

## § 101-40.402

by agency transportation officers. Debarment and suspension, however, shall only be imposed by the designated official specified in this subpart.

(d) Debarment or suspension of a carrier precludes the executive agency, including the Department of Defense, from awarding such carrier a contract for transportation.

(e) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

[51 FR 24337, July 3, 1986]

### § 101-40.402 General.

(a) Temporary nonuse may be imposed by an authorized agency transportation officer for the causes set forth in § 101-40.408-2. This action should be taken when a carrier's failure to provide adequate service indicates that the carrier's continued participation poses a risk to effective operation of agency transportation programs. Temporary nonuse is a localized program response to service failures which the carrier can readily correct during a period of limited exclusion.

(b) Debarment is designed to protect the Government by excluding a carrier for a specified period of time following completion of an investigation or legal proceeding. A carrier may be debarred for willful and/or persistent service failures or if the agency's debarring official determines that a Government-wide exclusion of the carrier is necessary to ensure the integrity of Government transportation programs. The agency's transportation officer shall refer carriers to the agency's debarring official in accordance with 48 CFR 9.406, if the carrier has willfully and/or persistently failed to comply with its contractual obligations under the terms and conditions of any contract for transportation. Referrals for criminal and/or civil fraud prosecutions should be made by the agency's Inspector General or an equivalent official.

(c) Suspension is designed to protect the Government pending the outcome of a legal proceeding or investigation concerning criminal activity, civil fraud, or antitrust violations concerning contractual relations with the Government. When the agency transportation officer suspects that a carrier has engaged in such conduct, the

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matter should be referred to the agency's Inspector General or an equivalent official.

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### § 101-40.403 Definitions.

(a) *Affiliates* means carriers or individuals if, directly or indirectly—

(1) Either one controls or can control the other, or

(2) A third party controls or can control both.

(b) *Agency* means executive agencies unless otherwise noted.

(c) *Consolidated list* means the list compiled, maintained, and distributed by GSA under 48 CFR 9.404 to identify Government contractors debarred or suspended. For the purpose of implementing the provisions of this subpart, the contractor listing shall also include debarred or suspended commercial carriers.

(d) *Carrier* means any individual or other legal entity authorized to transport freight or household goods under a certificate, license, or permit issued by a Federal, State, or local regulatory body.

(e) *Contract for transportation* means a GBL, commercial bill of lading, purchase order, rate tender, or any other instrument establishing binding obligations on the Government to purchase, and the carrier to provide, transportation services.

(f) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction whether entered upon a verdict or plea, and includes a conviction entered upon a plea of *nolo contendere*.

(g) *Debarment* means action taken by a debarring official under 48 CFR 9.406 to exclude a carrier for a specified period of time from receiving on a Government-wide basis any type of contract for transportation.

(h) *Debarring official* means the head of an agency or an official authorized under 48 CFR 9.403 by the head of an agency to impose debarment.

(i) *Indictment* means indictment for a criminal offense. Any information or other filing by competent authority charging criminal offense shall be given the same effect as an indictment.